

## Committee on Resources

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### Witness Statement

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**TESTIMONY OF MR. GLENN ROGERS  
CHAIRMAN, SHIVWITS BAND  
OF THE PAIUTE INDIAN TRIBE OF UTAH  
BEFORE THE HOUSE COMMITTEE ON RESOURCES  
APRIL 4, 2000  
IN SUPPORT OF H.R. 3291  
TO PROVIDE FOR THE SETTLEMENT OF THE WATER  
RIGHTS CLAIMS OF THE SHIVWITS BAND OF THE PAIUTE  
INDIAN TRIBE OF UTAH, AND FOR OTHER PURPOSES**

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Chairman Young and Honorable Members of the Committee:

My name is Glenn Rogers, Chairman of the Shivwits Band of the Paiute Indian Tribe of Utah, and I am here to testify on behalf of the Band in support of House Bill 3291, "for the settlement of the water rights claims of the Shivwits Band of the Paiute Indian Tribe of Utah, and for other purposes." I am accompanied today by Mr. Patrick Charles, a member of the Shivwits Band Council for the past three years, and Mr. Lawrence Snow, a council member for the past two years, both of whom have been key participants in our water rights negotiations. The statements of Messrs. Snow and Charles are incorporated into our collective written statement which we submit for the record. The two other members of our Band Council who could not attend today, Mr. Mart Snow and Mrs. Patricia Wash, have also sent their support for H.R. 3291.

Thank you for the opportunity to testify in favor of this very important bill. Passage of this bill and implementation of the underlying water development agreements will be a major breakthrough for our Band. I hope it will mark the beginning of our economic revitalization and the end of 150 years of inequity between our people and our non-Indian neighbors. It took many meetings and more than a decade of difficult negotiations to reach this settlement, and this package represents the coming together of several conflicting interests to share our area's most important and scarcest resource. It marks the first real chance

for our Band to develop jobs and an economy for our people on our Reservation.

This hearing comes at an interesting time: yesterday was the anniversary of the day that our Tribe was restored from termination by Congress, in the Paiute Restoration Act. The Tribe was "terminated" in 1954, but on April 3, 1980, Congress re-recognized the existence of the Shivwits Band and the four other bands of Southern Paiutes that comprise the Paiute Indian Tribe of Utah, and re-established our government-to-government relationship.

### **Recent History of the Shivwits Band**

The Santa Clara river has always been the population center for the greater area where our Band has lived for centuries. Archaeologists say we have been in the area where we now live since 1150 A.D. There is abundant documentation of our presence in the journals of the various anglo explorers who came across our desert in the late 18th century and early 19th century. Spanish explorers noted our presence in 1776. Jedediah Smith noted our presence, our irrigation structures, and our fields along the Santa Clara River in 1826. Scouts for the Church of Jesus Christ of Latter Day Saints reported our presence and our extensive irrigation systems and crops in 1848.

The Shivwits have always been farmers. Our ancestors hunted and harvested wild food resources on the southern uplands including the Shivwits Plateau and the north rim of the Grand Canyon, but they mainly lived and farmed on the Santa Clara river. For many generations over hundreds of years, our people have cultivated corn, squash, beans, and melons. When the Mormons started colonizing the Santa Clara region in 1854, they preferred the Santa Clara's ample water supply and agricultural bottomlands, and we quickly lost most of our agricultural lands along the river, and our water.

We are a strong people. During the termination period from 1954 to 1980, the Shivwits Band found a way to pay the state's taxes on our land. We formed a corporation and used the income from leasing our land to pay the taxes on our land until it returned to trust.

Regaining federal recognition in 1980 was supposed to lead to a recovery from the disastrous effects of the last 150 years on our people, but it has not helped as much as we expected. In the 20 years since the Paiute Restoration Act was passed, our membership has grown tremendously; 45 percent of our members are under age 20. Our population has grown, but housing and employment opportunities have not. The Band's primary means of income have largely stayed the same: leasing our land for other people to run businesses that require little, if any, water and that provide few, if any, employment opportunities for Band members.

Economic development on the reservation has been on hold due to lack of water since the Band was restored in 1980. Today we are still facing the same problems we faced in 1980 and before.

### **Mismanagement of the Band's Resources by the United States**

In September of 1891, the Commissioner of Indian Affairs requested that a tract of land, approximately the six-by-six mile area of the current reservation, be withdrawn and reserved until allotments were made. Letter of September 24, 1891 from T.J. Morgan, Commissioner of Indian Affairs, to the Secretary of the Interior. The Secretary's withdrawal of these lands on the following day reserved appurtenant water rights under the Winters doctrine for the benefit of the Shivwits Band.

The United States intended for this Reservation to be a permanent homeland for the Shivwits, but it allowed

non-Indians to appropriate virtually all available water. Beginning in the late 1800s, non-Indian water users appropriated, under state law, virtually all of the natural flow of the Santa Clara River, leaving the Shivwits with only enough water to irrigate 80-90 acres. Upstream dams and reservoirs were constructed by non-Indians which diverted and stored water for the exclusive benefit of private parties and irrigation companies.

The Band has suffered and continues to suffer tremendously, financially and culturally, from the United States' failure to protect our water rights.

Our trustee allowed non-Indian diversions and dams to be built on and near our Reservation without ever securing an adequate water right to make our Reservation a "homeland." It officially authorized rights-of-way for water development structures on our lands without requiring compensation to the Band, and knowingly allowed trespasses of a non-Indian reservoir on the Reservation. A diversion and canal were built on the Reservation in 1914 by a neighboring irrigation company without compensation to the Band or any allowance for us to receive water from the canal. A dam was built on the reservation in 1933, without compensation for the inundation of our lands or any share of water for the Band. Reservoirs were built on the river upstream from the Band, with U.S. knowledge, but no provision was made for storage for our benefit. A reservoir was built on the eastern edge of the Reservation in 1917 that partly trespasses on our land, with the U.S.' knowledge but without compensation for this use of our land or our water.

The loss of water deprived the Shivwits Band of economic development opportunities. Meanwhile, we have watched our neighbors prosper. The economic damage to the Band is estimated at \$50,951,100.00.

### **The Shivwits Band's Need for Water**

When I was growing up on the reservation, each family had a farm, and grandparents taught their grandchildren how to grow tomatoes, corn, squash, cantaloupe, and beans. Our Band owned farming equipment, horses and cows. When the Band was "terminated" in 1954, we lost all of that. Even with restoration, the Shivwits have never recovered the thriving agricultural economy that we had prior to the late 1800s. We are ready to recover now - in agriculture and other projects that will create a self-sustaining economy on our reservation. This settlement of our water rights claims can be the start of a new era for the Shivwits if it is done right.

Today we have only 19 houses for the approximately 130 Band members residing on the Reservation, so each house is very crowded. The rest of our people have left the reservation to find jobs and better living conditions. The current rate of unemployment among adult Shivwits members is extremely high compared to 3.4% statewide. Many of our Band members work in very low paying jobs off of the Reservation. Most of us who are working still live below poverty guidelines.

The two current overriding desires of our membership are: (1) for the Shivwits Band to become self-sufficient, and (2) to build more houses on the reservation so that more members can move back home.

Many of the Shivwits members are very anxious to revive our traditional farming economy when this settlement is finally completed. Our farm is not currently irrigated because the operational costs of the farm, especially the price of diesel fuel to run the generator for the pump, are prohibitive.

Our reservation cannot serve as an adequate homeland unless we acquire an adequate water supply. We want to increase our children's chance of competing on an equal footing with their non-Indian peers. In

order to improve education, housing and health care for our people, we first need water and money to create jobs and a self-sustaining economy on the Reservation.

### **The Benefits of This Settlement**

In 1987, the United States filed a reserved water rights claim on behalf of the Shivwits Band in the basin-wide adjudication encompassing the Santa Clara River. The claim is for 11,355 acre feet with a time immemorial priority date. The State of Utah indicated that it would strongly contest this claim. No matter what the result in court, we faced a very low chance of being able to turn a significant paper water right into wet water without the cooperation of the state and local parties. All parties agreed to pursue a negotiated water rights settlement that would avoid litigation and minimize impact to non-Indian users while securing an adequate firm water supply for the Band to meet its current water needs and to make the Shivwits Reservation a viable homeland for future generations.

The settlement that is reflected in H.R. 3291 comes after many long years of difficult negotiations. It secures for the Band a reliable right to 4,000 acre feet annually and the right to full participation in future regional water development projects. 2,000 acre feet are from a firm supply which will not fluctuate in dry or wet years: the Band has the first priority to 2,000 acre feet annually of the water produced by the new reuse project that will be constructed in the City of St. George. This water cannot be used for domestic purposes, but is appropriate for other uses. 100 acre feet will come from groundwater from wells on the Reservation. The remaining 1,900 acre feet per year is a reliable supply from surface water of the Santa Clara River that flows through the Reservation. It will be supplemented with off-reservation groundwater wells in dry years. Pumping the supplemental ground water and paying the annual operational, maintenance, repair and replacement costs for the Santa Clara Project will be costly, and is partially covered by the separate allocation of \$1 million in H.R. 3291.

The benefits of this settlement to the Band include:

A firm, reliable water supply which will be available within a short time frame and for perpetuity. The United States and the Band have worked very hard to ensure that the two underlying project agreements (Reuse and Santa Clara) are enforceable and will actually provide a firm and reliable supply of water for the Band in perpetuity.

Better relations with the local interests and the State, which strongly support the settlement projects. These entities have contributed monies to assist in project development.

A significant water right for the Band from the river that flows through the reservation. (Note however that this water right lacks real meaning unless the settlement continues to include financial assistance with the OM&R costs of participating in the Santa Clara Project (as set forth below)).

A structural, infrastructure and operational system to deliver the water to the Reservation or to the primary service area for water marketing.

Support from all parties of the Band's right to lease its high-value unused water supplies to other water users until it is ready to develop them. This potential revenue stream is a significant benefit of this settlement, and partially allows for the relatively low number of acre feet and dollars that are received directly through the settlement. Eventually, much more than 4000 acre feet per year will be necessary to serve the needs of the Band's members. The revenue from leasing today can be used

tomorrow to help us acquire the additional water supplies that the Band will need in the future to supplement the 4000 acre feet provided in this proposed settlement package.

The parties are cooperating to identify and mitigate any negative environmental consequences of the proposed projects.

In November 1999, Shivwits representatives set forth the remaining items that were absolutely necessary to make this settlement work for the Band. We still need to finalize our written agreements with the state and local parties concerning some of those essential items, but believe that we will succeed. They include:

The Band's future needs for domestic/potable water will be met under two separate new agreements that will be finalized with the Washington County Water Conservancy District and the City of St. George prior to settlement. The City has agreed to sell up to 100 acre feet annually of potable water to the Band, from the city water tank that is located on the Shivwits Reservation, at in-city rates. Second, the Washington County Water Conservancy District has agreed to reserve 100 acre feet of water for the Band to begin purchasing 50 years from now.

The Band's total water right can increase over time to meet the needs of future generations, due to separate agreements with the State and local entities to give the Band a right of first refusal to participate (on otherwise equal terms with other participants) in future regional water development projects.

The Band has made the above-described side agreements a condition precedent to accepting the settlement package.

The Band will receive \$6,000,000 total under this settlement. \$1,000,000 is for partial assistance with the major costs of participating in the Santa Clara project. Those costs were not known until the details of the Project were established in recent months. It has come to light that the Band's share of the operation, maintenance, repair and replacement costs for the Santa Clara Project could approach \$2 million, at present value. Part of this is because the Band cannot access the supplemental groundwater to reach 1900 acre feet in below average years unless it pays for pumping. This cost can be prohibitive, as shown by the Band's current inability to operate its sprinkler system due to the cost of diesel fuel for pumping. The rest is because, even in average water years, the Band cannot receive any of its 1900 acre feet from the Santa Clara Project unless it pays its portion of the OM&R for the entire Project, which includes future costs of maintaining the two reservoirs and the pipeline.

In sum, now that all the flow of the Santa Clara river has been appropriated, the only way the Band can have a fair share of the river is to participate in this pooling agreement and pay the costs of delivering the water through the proposed Project. The \$1 million appropriation written in H.R. 3291 for this purpose would pay approximately half of the Band's estimated cost to participate. It is a modest request and is absolutely necessary for the proposed settlement to serve the Band's needs. The 1900 acre foot portion of our water right is essentially rendered meaningless to the Band unless the settlement package includes specific assistance for the costs of OM&R, including pumping, for the Santa Clara project.

The other \$5,000,000 will go to a trust fund that the Band will spend on economic development on the Reservation. This fund will partially compensate for the Band's lost income due to the trustee's failing to protect the Tribe's water rights and allowing non-Indians to build water development structures across reservation lands without compensation to the Band. Creation of this fund will be followed by a release of the related claims by the Band against the federal government.

The Band must be free to use its best judgment in setting up the development projects that we believe will best create prosperity for our future generations. This is consistent with the current federal policy of promoting self-determination for Indian tribes. The Band must be able to apply the trust fund toward any economic development project that will build a self-sustaining economy on the Shivwits Reservation -- whether or not each individual economic development project is classified as a "water resource development" project. The State and local parties all agreed to this, and it is reflected in the bill before you.

### **CONCLUSION**

It has been a shame to see our Band fail to meet its goal of economic recovery from termination because we do not have the most important resource in our arid region - water. HR 3291 will help the Shivwits Band create new and meaningful employment opportunities, and provide a better future for our children. We will now have a realistic chance to achieve self-reliance.

Thank you for allowing me to testify. I request your support in enacting this important bill during this session of Congress.

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